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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/706,368

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EXAMINER

WHIPPLE, BRIAN P

ART UNIT

PAPER NUMBER

2452

NOTIFICATION DATE

DELIVERY MODE

11/06/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspatents@senniger.com

Office Action Summary	Application No. 10/706,368	Applicant(s) MCMILLAN ET AL.	
	Examiner BRIAN P. WHIPPLE	Art Unit 2452	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 12-25 is/are rejected.
- 7) ☒ Claim(s) 9-11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>See Continuation Sheet</u> . | 6) <input type="checkbox"/> Other: _____ |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date:
11/12/03, 5/21/04, 10/28/05, 6/30/06, 7/21/06, 1/5/07, 3/1/07, 5/17/07, 6/8/07, and 6/13/08.

DETAILED ACTION

1. Claims 1-25 are pending in this application and presented for examination.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 12-25 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

4. As to claim 12, Applicant defines the computer readable media as comprising “instructions, data structures, program modules or other data in a modulated data signal such as a carrier wave or other transport mechanism and includes any information delivery media... communication media includes... wireless media such as acoustic, RF, infrared and other wireless media” (Applicant’s disclosure, [0025]).

Carrier waves and acoustic waves are non-tangible transmission mediums incapable of tangibly storing an embodiment of the invention. Carrier waves, acoustic waves, etc. fail to fall into one of the four statutory classes of invention: process, manufacture, machine, or composition of matter.

5. As to claims 13-25, the claims depend on, and include the non-statutory subject matter of, independent claim 12.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-4, 6-8, 12-15, 17-19, and 23-25 are rejected under 35 U.S.C. 102(a/e) as being anticipated by Bandini et al. (Bandini), U.S. Publication No. 2002/0199095 A1.

8. As to claim 1, Bandini discloses a method of determining if a message is spam in a system having a plurality of anti-spam modules (Abstract, ln. 3-9) comprising the steps of:
invoking a plurality of the plurality of anti-spam modules ([0026]);

receiving a spam confidence level from each of the plurality of the plurality of anti-spam modules ([0023]);

determining a highest spam confidence level from the spam confidence levels ([0023]);

comparing the highest spam confidence level to at least one threshold ([0023]); and

invoking an action associated with the at least one threshold if the highest spam confidence level is greater than the at least one threshold ([0021]).

9. As to claims 12 and 23, the claims are rejected for reasons similar to claim 1 above.

10. As to claims 7-8 and 18-19, the claims are rejected for reasons similar to claim 1 above ([0021]).

11. As to claim 2, Bandini discloses the step of applying a tuning factor to at least one spam confidence level to create at least one tuned spam confidence level and wherein the step of determining a highest spam confidence level comprises the step of determining the highest of the at least one tuned spam confidence level and the spam confidence levels that had the tuning factor applied ([0033]).

12. As to claims 4, 13, and 15, the claims are rejected for reasons similar to claim 2 above.

13. As to claim 3, Bandini discloses tuning the at least one spam confidence level by a user's confidence level in the anti-spam module associated with the at least one spam confidence level ([0037], ln. 13-17; [0038] – [0039]).

14. As to claim 14, the claim is rejected for reasons similar to claim 3 above.

15. As to claim 6, Bandini discloses the step of adding the spam confidence level to the message (Fig. 3, item 72; [0023], ln. 8-10).

16. As to claim 17, the claim is rejected for reason similar to claim 6 above.

17. As to claim 24, Bandini discloses the step of invoking the plurality of the plurality of anti-spam modules includes the step of providing a list of recipient addresses in the message ([0028]).

18. As to claim 25, Bandini discloses performing the step comprising cracking an encoded content of the message ([0030] – [0031]).

Claim Rejections - 35 USC § 103

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

20. Claims 5 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bandini as applied to claims 4 and 15 above, in view of what was well known in the art.

21. As to claim 5, Bandini discloses the invention substantially as in parent claim 4, including “assigning a weight to each evaluation and combining all weighed scores to arrive at the overall score” [0033], but is silent on the normalized range is 0 to 9.

Official Notice (See MPEP 2144.03) is taken that assigning the normalized range as 0 to 9 would have been obvious to one of ordinary skill in the art at the time of the invention. The weighted scores of Bandini are used to weigh values against a spam confidence level, as discussed above, as is done in the embodiment of the Applicant’s invention. Therefore, assigning the range of Bandini to a set of integers such as 0 to 9 has no effect on the end result of both Bandini and Applicant’s embodiments.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Bandini by specifying the normalized range as 0 to 9 to achieve the predictable result of using a weighted score to compare against a spam confidence level.

Furthermore, see MPEP 2144.05 for the obviousness of claimed ranges versus ranges in the prior art.

22. As to claim 16, the claim is rejected for reasons similar to claim 5 above.

Allowable Subject Matter

23. Claims 9-11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

24. As to claims 9-11, the prior art fails to disclose, teach, or suggest the subject matter of claim 9 (as discussed in the parent case, Application No. 10/339,508).

25. As to claims 20-22, the claims would be objected to as being dependent upon a rejected base claim, and allowable if rewritten in independent form including all of the

limitations of the base claim and any intervening claims, but are rejected under 35 U.S.C. 101 as discussed above. The rejection under 35 U.S.C. 101 would need to be overcome for claims 20-22 to be indicated as allowable subject matter.

Conclusion

26. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See the Notice of References Cited (PTO-892).

27. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIAN P. WHIPPLE whose telephone number is (571)270-1244. The examiner can normally be reached on Mon-Fri (10:30 AM to 7:00 PM EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brian P. Whipple
/B. P. W./
Examiner, Art Unit 2452
10/27/08

/Kenny S Lin/
Primary Examiner, Art Unit 2452